

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JUNE THEPSOMBANDITH,

Petitioner,

v.

V.M. ALMAGER, Warden,

Respondent.

Civil No. 08-1172 JLS (PCL)

ORDER:

(1) DISMISSING CASE NUMBER 08cv1172 AS DUPLICATIVE OF CASE NUMBER 07cv2248;

(2) DIRECTING CLERK TO APPLY \$5.00 FEE PAID IN CASE NUMBER 08cv1172 TO CASE NUMBER 07cv2248; and

(3) CLOSING CASE NUMBER 08cv1172 AND REOPENING CASE NUMBER 07cv2248

On November 27, 2007, Petitioner, a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 which was assigned case number 07cv2248. The Court dismissed case number 07cv2248 on May 20, 2008, because Petitioner had failed to pay the \$5.00 filing fee. (See Order dated May 20, 2008 in case no. 07cv2248 [doc. no. 9].) Petitioner was given until June 30, 2008 to pay the \$5.00 filing fee.

On July 1, 2008, Petitioner submitted a second Petition for Writ of Habeas pursuant to 28 U.S.C. § 2254 and paid the \$5.00 filing fee. The Clerk's Office assigned the matter case number 08cv1172 JLS (PCL).

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1 Having reviewed these cases, it is apparent that Petitioner's intent in filing case number
2 08cv1172 was to comply with the Court's dismissal Order in case number 07cv2248. Moreover,
3 having reviewed the petitions in both cases, is it clear they are identical. The Court may dismiss
4 a duplicative petition as frivolous if it "merely repeats pending or previously litigated claims."
5 *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (citations omitted).

6 Based on the foregoing, the Court **ORDERS** that:

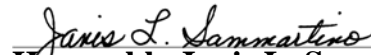
7 (1) Case number 08cv1172 is **DISMISSED** as duplicative of the petition filed in case
8 number 07cv2248;

9 (2) The Clerk of Court is **ORDERED** to apply the \$5.00 filing fee Petitioner submitted
10 in case number 08cv1172 to case number 07cv2248; and

11 (3) The Clerk of Court is **ORDERED** to reopen case number 07cv2248 and close case
12 number 08cv1172.

13 **IT IS SO ORDERED.**

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15 **DATED: July 31, 2008**

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17 **Honorable Janis L. Sammartino**
18 **United States District Judge**
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